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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/711,129	11/12/2000	George Dean Hone	4214.1US	6459

7590

02/25/2003

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EXAMINER

PECHHOLD, ALEXANDRA K

ART UNIT

PAPER NUMBER

3671

DATE MAILED: 02/25/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/711,129

Applicant(s)

HONE, GEORGE DEAN

Examiner

Alexandra K Pechhold

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 January 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) _____ is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. **Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Veenema (US 3,989,157) in view of Auer (US 4,557,091).**

Regarding claim 1, Veenema discloses a floor element, seen as floor (20) in Fig. 1, and two wall elements, seen as panels (14, 16) in Fig. 1, which are positioned atop the floor element and positioned spacedly apart from one another and extending uprightly from the floor element. A ceiling element positioned atop the two wall elements is seen as panel (18) in Fig. 1.

Veenema fails to disclose the floor, wall, and ceiling elements as being fabricated from at least one pultruded panel. Auer teaches structural systems, such as panel (12) with various interlocking panel joining members manufactured by extruding fiberglass-reinforced plastic in a "pultrusion" process which is known in the art (Col 5, lines 3-7). Auer notes that the "pultruded" panels and interlocking members produced by pultrusion provide an extremely light-weight and strong structural system which is also impervious to many types of corrosive substances (Col 5, lines 7-11). It would have been obvious

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to one having ordinary skill in the art at the time the invention was made to modify the panels of Veenema to be fabricated from pultrusion as taught by Auer, since Auer states in column 5, lines 3-11 that the pultrusion process is known in the art, and that pultruded panels and interlocking members produced by pultrusion provide an extremely light-weight and strong structural system which is also impervious to many types of corrosive substances.

3. Claims 2-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Veenema (US 3,989,157) and Auer (US 4,557,091) as applied to claim 1 above, and further in view of De Zen (US 6,189,269B1).

Regarding claim 2, the combination of Veenema and Auer fails to disclose a honeycomb cross-section, and at least one panel defining an elongate channel therein dimensioned to receive and retain wiring. Veenema discloses channels formed between the panels (14, 18) and upper rail (30a) as seen in Fig. 2. De Zen teaches wall members securing wiring in channels interiorly of a hollow structure formed by the wall forming member and other wall forming members (see abstract). The wiring channel forms an isolated compartment within the formed wall structure, leaving an unobstructed wiring raceway within the wall structure (Col 3, lines 14-24), and it is highly desirable to conceal electrical wiring (Col 6, lines 56-57). De Zen also teaches panels defining a honeycomb cross-section, seen as wall panels (2) having exterior and interior walls (7, 8) connected by transverse webs (9) forming internal cells (10) (Col 5, lines 13-15). De Zen utilizes the cells for pouring concrete and forming an extremely strong permanent wall structure (Col 5, lines 15-17). It would have been obvious to one

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having ordinary skill in the art at the time the invention was made to panels of Veenema have a honeycomb cross-section and be dimensioned to receive and retain wiring as taught by De Zen, since De Zen states in column 5, lines 15-17 that the cells form an extremely strong permanent wall structure, and De Zen states that having a channel in an isolated compartment formed in the wall structure provides an unobstructed wiring raceway (Col 3, lines 14-24), and that it is highly desirable to conceal electrical wiring (Col 6, lines 56-57). Thus, the wiring is protected from harmful exterior environmental conditions and damage.

Regarding claims 3-5, Veenema illustrates the longitudinal axes of the panels (14, 16, 18) and floor (20) oriented parallel to a longitudinal axis of the passageway in Fig. 1. The combination of Veenema and Auer fails to disclose the wall, floor, and ceiling elements fabricated from a plurality of panels, the panels defining a honeycomb cross-section. De Zen teaches walls formed of a plurality of wall panels (2) (see Figs. 2 and 4) and a ceiling formed by a plurality of roof panels (4) (see Figs. 2 and 8). De Zen also teaches panels defining a honeycomb cross-section as discussed regarding claim 2 above. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify panels (14, 16, 18) and floor (20) of Veenema to be comprised of numerous panels defining a honeycomb cross-section, since De Zen teaches that it is known to have structures comprising ceilings and walls of a plurality of panels and De Zen states in column 5, lines 15-17 that the cell shape forms an extremely strong permanent wall structure.

4. **Claims 6-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Veenema (US 3,989,157) and Auer (US 4,557,091), and further in view of De Zen (US 6,189,269B1).**

Regarding claim 6, Veenema discloses the structure of each passageway module as discussed regarding claim 1 above. Furthermore, Veenema discloses a connection structure, seen as top rails (30a, 30b) and lower rails (34a, 34b) in Fig. 1.

Although Veenema fails to disclose just one passageway module as opposed to a plurality, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the single passageway module of Veenema so there are a plurality of such modules, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

Veenema fails to disclose the panels being pultruded and defining a honeycomb cross-section. Auer teaches panels formed in a pultrusion process as discussed regarding claim 1 above. De Zen teaches panels with a honeycomb cross section as discussed regarding claims 3-5 above. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the panels of Veenema to be fabricated from pultrusion as taught by Auer and defining a honeycomb cross section as taught by De Zen, since Auer states in column 5, lines 3-11 that the pultrusion process is known in the art, and that pultruded panels and interlocking members produced by pultrusion provide an extremely light-weight and strong structural system which is also impervious to many types of corrosive substances, and De Zen

states in column 5, lines 15-17 that the cell shape forms an extremely strong permanent wall structure.

Regarding claim 7, Veenema discloses a pair of frame structures, seen as upper rail (30a) and lower rail (34a) in Figs. 1 and 2, having an upwardly extending ear and downwardly extending ear, seen as the downwardly extending portion of rail (30a) and the upwardly extending portion of rail (34a). A first pair of angle defining, elongate connection elements are seen as flanges (46, 54) in Fig. 5 on upper rail (30a). A second pair of angle defining, elongate connection elements are seen as flanges (76, 68) in Fig. 2 on lower rail (34a). An engaging structure can be viewed as teeth (64) or ridge (66) shown in Fig. 2. With respect to the recitations in lines 4-6, 7-9, and 10-13, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

Regarding claim 11, Veenema discloses the limitations of the claimed invention as discussed in reference to claims 6 and 7 above.

Regarding claims 8 and 12, Veenema illustrates quadrilateral frames, seen as the rails (30a, 34a) in Figs. 1 and 2. These rails define a passageway opening therethrough between the flanges (54,46 and 44, 52) in the upper rail (30a), and flanges (76, 68) in lower rail (34a).

Regarding claim 9, Veenema discloses a bolt, seen as ridge (66) in Fig. 2, although fails to disclose a nut in combination therewith. Veenema states that the ridge

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(66) penetrates the respective panel core (22) and cooperates with walls (62) to hold the molding (60) securely on the end of the panel (Col 2, lines 59-63). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the ridge (66) of Veenema to be utilized in combination with a nut, since Veenema utilizes the ridge (66) as a fastening means between the molding (60) of the rail (30a) and the panel (Col 2, lines 59-63), and substituting a nut and bolt would accomplish the same purpose of fastening, and nuts and bolts are commonly used, readily accessible fastening means.

Regarding claims 10 and 13, Veenema discloses that a conventional adhesive may be provided between a panel and a molding (60) on the rails (Col 2, lines 56-57).

Regarding claims 14-17, the combination of Veenema (US 3,989,157), Auer, and De Zen (US 6,189,269B1) discloses the limitations of the claimed invention as discussed in reference to claims 2-5 above.

Response to Arguments

5. Applicant's arguments filed 1/2/03 have been fully considered, but some are not persuasive.

Applicant indicates that independent claims 1 and 6 are Jepson-type claims, and that the preamble, directed to a passageway within a boarding bridge for facilitating passage between an aircraft terminal and a docked aircraft, constitutes a proper claim limitation which can be relied upon to distinguish the claim over the cited art. According to the Manual of Patenting Examining Procedure § 2129 entitled "Admissions as Prior

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Art", the preamble elements in a Jepson-type claim (i.e., a claim of the type discussed in 37 CFR 1.75(e) are impliedly admitted to be old in the art. Applicant even admits on page 2, lines 11-13 that "[t]he use of boarding bridges for facilitating the movement of passengers and cargo from a terminal building to an aircraft parked proximate thereto is well known." The pertinent section of the MPEP is as follows:

2129 Admissions as Prior Art [R - 3]

ADMISSIONS BY APPLICANT CONSTITUTE PRIOR ART

When applicant states that something is prior art, it is taken as being available as prior art against the claims. Admitted prior art can be used in obviousness rejections. In re Nomiya, 184 USPQ 607, 610 (CCPA 1975) (Figures in the application labeled "prior art" held to be an admission that what was pictured was prior art relative to applicant's invention.).

A JEPSON CLAIM RESULTS IN AN IMPLIED ADMISSION THAT PREAMBLE IS PRIOR ART

The preamble elements in a Jepson - type claim (i.e., a claim of the type discussed in 37 CFR 1.75(e); see MPEP § 608.01(m)) ">"< are impliedly admitted to be old in the art, >...< but it is only an implied admission. " In re Ehrreich,>590 F.2d 902, 909 - 910< 200 USPQ 504, 510 (CCPA 1979) (emphasis in original) (citations omitted). >See also Sjolund v. Musland, 847 F.2d 1573, 1577, 6 USPQ2d 2020, 2023 (Fed. Cir. 1988); Pentec, Inc. v. Graphic Controls Corp., 776 F.2d 309, 315, 227 USPQ 766, 770 (Fed. Cir. 1985); and Reading & Bates Construction Co. v. Baker Energy Resources Corp., 748 F.2d 645, 650, 223 USPQ 1168, 1172 (Fed. Cir. 1984).< Claims must be read in light of the specification. Where the specification confirms that the subject matter of the preamble was invented by another before applicant's invention, the preamble is treated as prior art. However, certain art may be prior art to one inventive entity, but not to the public in general. In re Fout, >675 F.2d 297, 300 - 301,<213 USPQ 532, 535 - 36 (CCPA 1982). This is the case when applicant has made an improvement on his or her own prior invention. An applicant's own foundational work should not, unless there is a statutory bar, be treated as prior art solely because knowledge of this work is admitted. Therefore, when applicant explains that the Jepson format is being used to avoid a double patenting rejection over their own copending application, the implication that the pre amble is admitted prior art is overcome. Reading & Bates Construction Co. v. Baker Energy >Resources Corp., 748 F.2d 645, 650<, 223 USPQ 1168>, 1172< (Fed. Cir. 1984). >Compare< In re Fout, >675 F.2d 297, 300 - 01,< 213 USPQ 532, 535 - 36 (CCPA 1982) (The court held that the preamble was admitted prior art because the specification explained that Paglaro, a different inventor, had invented the subject matter described in the preamble.).

Therefore, the Jepson-type format used in claims 1, 6, and 11 is considered part of the admitted prior art.

Applicant also argues that Veenema does not disclose a passageway, since Veenema discloses a container assembly, which is not "a way that allows passage" (Webster Dictionary, 2002). The assembly of Veenema is a container body for a transportation vehicle (Col 1, line 5), specifically a container body for a truck or trailer, etc. (Col 1, line 57). Veenema states that a rear end panel may be assembled in the same manner as the front end panel (15), and may contain a door for access to the interior of the container, or in the alternative, the entire panel may function as a door by sliding between the flanges of the vertical rails (31) (Col 3, lines 59-64). Therefore, when the front and rear panels function as a door by sliding between the flanges of the vertical rails, the entire container of Veenema qualifies as a "passageway", since it is "a way that allows passage."

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexandra Pechhold whose telephone number is (703) 305-0870. The examiner can normally be reached on Mon-Thurs. from 8:00am to 5:30pm and alternating Fridays from 8:00am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached on (703)308-3870. The fax phone number for this Group is (703) 305-3597.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1113.



Thomas B. Will
Supervisory Patent Examiner
Group 3600

AKP
2/22/03